

Unofficial Draft Copy

As of: October 23, 2008 (7:06am)

LC0628

**** Bill No. ****

Introduced By *****

By Request of the Legislative Finance Committee

A Bill for an Act entitled: "An Act revising laws governing the expenditure of appropriations; requiring the use of fund transfers for the purpose of expending nongeneral fund money before expending general fund money; clarifying conditions for expending money appropriated for the second year of a biennium in the first year of a biennium; amending sections 17-2-108, 17-7-139, and 17-7-301, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-108, MCA, is amended to read:

"17-2-108. Expenditure of nongeneral fund money first. (1)

Except for the exemptions applicable to the Montana historical society in 22-3-114(5), the Montana state library in 22-1-226(5), the Montana school for the deaf and blind in 20-8-107(5), and the department of public health and human services in 53-1-612, an office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations. Unless a restriction is contained in an appropriation act, the requirement of this subsection includes using fund transfers among programs as authorized by 17-7-139.

(2) Except as provided in 53-1-612, the approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease.

(3) If directed by an appropriation act, the approving authority may decrease a state special revenue, proprietary, or other fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation unless the decrease is contrary to state or federal law or federal rule. The appropriation for the fund in which the money is received is decreased by the amount of the federal special

revenue increase allowed by law, rule, or contract and approved for the purpose."

{ Internal References to 17-2-108:

17-7-304x

20-8-107x

22-1-226x

22-3-114x

53-1-612x }

Section 2. Section 17-7-139, MCA, is amended to read:

"17-7-139. Program transfers. (1) (a) Unless prohibited by law or a condition contained in the general appropriations act, the approving authority:

_____ (i) may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year; and

_____ (ii) shall approve agency requests to transfer appropriation between programs within each fund type if the request is made for purposes of complying with 17-2-108(1).

(b) The legislature may restrict the use of funds appropriated for personal services to allow use only for the purpose of the appropriation.

(c) An explanation of any significant transfer must be submitted on a regular basis to the interim committee that has program evaluation and monitoring functions for the agency pursuant to Title 5, chapter 5, part 2. An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change.

(d) If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee.

(d) All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer in writing, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer.

(e) If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred, except that money remaining from projected costs for spring fires estimated in the last quarter of the first year of a biennium may

be retransferred.

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds \$1 million; or

(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than \$25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer under consideration, must be used in determining the 25% and \$25,000 threshold."

{ *Internal References to 17-7-139:*
53-6-1101x }

Section 3. Section 17-7-301, MCA, is amended to read:

"17-7-301. Authorization to expend during first year of biennium from appropriation for second year -- proposed supplemental appropriation defined -- limit on second-year expenditures. (1) An agency may make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium if authorized by the general appropriations act. An agency that is not authorized in the general appropriations act to make first-year expenditures may be granted spending authorization by the approving authority upon submission and approval of a proposed supplemental appropriation to the approving authority. The proposal submitted to the approving authority must include a plan for reducing expenditures

in the second year of the biennium that allows the agency to contain expenditures within appropriations. If the approving authority finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other ~~income~~ available general fund, state special revenue, and federal funds will be insufficient for the operation and maintenance of the agency during the year for which the appropriation was made, the approving authority shall, after careful study and examination of the request and upon review of the recommendation for executive branch proposals by the budget director, submit the proposed supplemental appropriation to the legislative fiscal analyst.

(2) The plan for reducing expenditures required by subsection (1) is not required if the proposed supplemental appropriation is:

(a) due to an unforeseen and unanticipated emergency for fire suppression;

(b) requested by the superintendent of public instruction, in accordance with the provisions of 20-9-351, and is to complete the state's funding of guaranteed tax base aid, transportation aid, or equalization aid to elementary and secondary schools for the current biennium; or

(c) requested by the attorney general and:

(i) is to pay the costs associated with litigation in which the department of justice is required to provide representation to the state of Montana; or

(ii) in accordance with the provisions of 7-32-2242, is to

pay costs for which the department of justice is responsible for confinement of an arrested person in a detention center.

(3) Upon receipt of the recommendation of the legislative finance committee pursuant to 17-7-311, the approving authority may authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium. Except as provided in subsection (2), the approving authority shall require the agency to implement the plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations.

(4) The agency may expend the amount authorized by the approving authority only for the purposes specified in the authorization.

(5) The approving authority shall report to the next legislature in a special section of the budget the amounts expended as a result of all authorizations granted by the approving authority and shall request that any necessary supplemental appropriation bills be passed.

(6) As used in this part, "proposed supplemental appropriation" means an application for authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium.

(7) (a) Except as provided in subsections (2) and (7)(b), an agency may not make expenditures in the second year of the biennium that, if carried on for the full year, will require a deficiency appropriation, commonly referred to as a "supplemental appropriation".

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(b) An agency shall prepare and, to the extent feasible, implement a plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations. The approving authority is responsible for ensuring the implementation of the plan. If, in the second year of a biennium, mandated expenditures that are required by state or federal law will cause an agency to exceed appropriations or available funds, the agency shall reduce all nonmandated expenditures pursuant to the plan in order to reduce to the greatest extent possible the expenditures in excess of appropriations or funding. An agency may not transfer funds between fund types in order to implement a plan."

{Internal References to 17-7-301: None.}

NEW SECTION. **Section 4. {standard} Effective date.** [This act] is effective July 1, 2009.

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